



Many people ask us what the difference is between discrimination, equal employment opportunity (often called EEO) and affirmative action. This factsheet explains what people usually mean when they use these three terms in relation to employment.

Discrimination

Anti-discrimination laws

Both federal and NSW laws* say that it is against the law to discriminate against people, or treat them unfairly, in various areas of public life. One of these areas is employment.

This means that in NSW all employers and supervisors must generally treat all their employees, and anyone who applies for a job with them, fairly. In particular, they must not treat them unfairly, or harass them, because of their:

- sex (including pregnancy);
- race, colour, ethnic or ethno-religious background, descent or nationality;
- marital status;
- disability (including past, present or future physical, intellectual or psychiatric disability, learning disorders, or any organism capable of causing disease, for example, HIV);
- homosexuality (male or female, actual or presumed);
- age (including not forcing them to retire at the old retirement age);
- transgender (transsexual) status; and
- carers' responsibilities.

It is also unlawful for employers to harass employees because of any of their relatives', work colleagues' or friends' sex, race, marital status, disability, homosexuality, age, transgender status or carers' responsibilities.

* These laws are the NSW Anti-Discrimination Act 1977 and five Commonwealth Acts, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, the Human Rights and Equal Opportunity Commission Act 1987, the Disability Discrimination Act 1992 and the Age Discrimination Act 2004.

In general, therefore, employers and supervisors must treat people fairly, whether they, or their relatives or associates, are male or female, from one ethnic group rather than another, married or not, older or younger, and so on.

They must not allow any prejudices or stereotyped views that they have about people of a particular sex, race, age and so on to influence them in relation to who they hire, how they treat people while they are working for them, or who they dismiss or make redundant.

For example, an employer might assume that an older person wouldn't "fit in" with a predominantly young team, or that a woman isn't worth sending for training because she might get pregnant and leave, or that a person with a disability wouldn't be able to operate a computer or might make other people feel uncomfortable. All of these assumptions might be discriminatory if they result in the person being treated differently.

Employers must also be careful not to **indirectly** discriminate against people — that is, they must not have any requirement, rule or policy that results in disadvantaging one sex compared with another, one ethnic group compared with another, etc — unless they can show that the particular requirement, rule or policy is "reasonable in all the circumstances".

For example, a requirement that people must be over 180 cm tall to do a job is likely to end up discriminating against women and some ethnic groups. This is because women and people from some ethnic groups are less likely to be this height than men or people from other ethnic groups.

If it is possible to show that the job does not need someone 180 cm tall, or that it could easily be adapted

to suit people who aren't that tall, then they could claim indirect sex discrimination or indirect race discrimination. In effect, employers must give everyone an equal opportunity.

Employing people with disabilities

To ensure that people with disabilities are given an equal opportunity, anti-discrimination law also says that employers must provide any special facilities or services people with disabilities need to do a job — unless it would cause them “unjustifiable hardship” to do this.

For example, a person with limited manual dexterity may not be able to operate a standard computer mouse. However they may be able to use a trackball or other inexpensive device that would mean they would be just as effective as anyone else with a computer.

For more information about unjustifiable hardship contact the Anti-Discrimination Board.

Employing people with carers' responsibilities

To ensure that people with carers' responsibilities are given an equal opportunity, anti-discrimination law also says that employers must generally make any reasonable arrangements that are necessary for a person who has carers' responsibilities to enable them to do a particular job — unless it would cause them “unjustifiable hardship” to do this.

Examples of such arrangements might be to allow the person to work partly from home, adjusting working hours, working part-time or job-sharing, and being flexible about how paid and unpaid leave is used.

For more information about unjustifiable hardship contact the Anti-Discrimination Board.

Discriminating in favour of particular groups

The anti-discrimination laws allow employers to employ people of one sex rather than the other, or people of particular races or ethnic groups or people of particular ages for some types of jobs. In other words, employers can discriminate in favour of some groups over others when it is a genuine occupational qualification to be a certain race, sex or age.

For example, it is OK to employ a male actor for a male part in a play, or a person under the age of 21 to do a

'junior' job, or a woman to clean female toilets while women are likely to be using them, or a person of a particular ethnic group to provide certain welfare services for that ethnic group.

In these kinds of cases, employers can go ahead and deliberately employ a person of a particular sex, race or age without getting permission from anyone.

In other cases, employers need to apply for and get a specific exemption from the anti-discrimination laws before they can do this. Exemptions are only usually granted where targeting the job to a particular group will promote equal opportunity by helping to redress or correct disadvantages that group may have experienced in employment or service provision.

For example, a rural council may apply for an exemption to provide traineeships specifically for people from Aboriginal and Torres Strait Islander people. This will give training and employment opportunities for a group that generally have less opportunities in these areas, and may also improve links between the council and the local Aboriginal and Torres Strait Islander community.

In other words, exemptions are only usually granted where the employer intends to run what is effectively an 'affirmative action strategy' — refer to the next page for more about this. For more information about when exemptions are necessary and when they aren't, contact the Anti-Discrimination Board.

Equal Employment Opportunity

These days, many employers call themselves equal employment opportunity (EEO) employers. They may have an employee called an EEO officer to oversee EEO in their workplace, or they may simply ensure that their human resources or personnel manager, and/or other line managers, understand and follow EEO. Their job advertisements may say that they want people who understand and will follow EEO principles.

Employers and others are likely to mean one of two things when they use the term EEO. The two meanings of EEO are:

- Sometimes it means that the employer follows the anti-discrimination laws and tries to ensure that everyone in their workplace understands these laws and follows them too.

- Other times it means that as well as following anti-discrimination laws, the employer also prepares and implements specific equal employment opportunity management plans and/or programs designed to ensure that all really do get equal opportunity in the workplace.

For example, they may work out ways of identifying and then removing any barriers that certain groups have been facing in achieving real equal opportunity in their workplace. They may keep statistics on the proportions of different groups at different levels in their workplace/management hierarchy to help them monitor how EEO is or isn't working.

In effect, this sort of planning provides a more structured and foolproof way of ensuring that the employer does not — even unwittingly — break the anti-discrimination laws.

In fact, the law* says that all NSW and Commonwealth public sector organisations (including government departments and authorities, NSW health authorities and hospitals, and NSW universities), and all NSW local councils, must prepare such EEO plans.

They must also pay particular attention to certain groups known to have been disadvantaged in the past. These groups are women, Aboriginal and Torres Strait Islander people, people from non-English speaking backgrounds and people with disabilities.

In the NSW public sector, these plans are co-ordinated by the NSW Office of the Director of Equal Opportunity in Public Employment. In many cases, these EEO plans — whether prepared in the public or private sector — include what many people understand to be 'affirmative action strategies'.

Affirmative action

People generally use the term affirmative action in one of three ways:

- to cover everything to do with the development of equal opportunity plans — as described above.
- to describe specific affirmative action strategies — that is, strategies that provide special help for

groups who have been disadvantaged in the past. For example, the employer may run special training or recruitment programs for groups such as Aboriginal and Torres Strait Islander people or women.

Affirmative action strategies like this help give previously disadvantaged groups the skills and confidence to allow them to compete on equal terms with everyone else. This helps ensure that equal opportunity becomes a reality for everyone. It also helps ensure that employers get the best out of all groups in their workplace.

Note that in order to conduct these types of affirmative action strategies in NSW, employers generally first need to get their program certified — for more information about when this is necessary and when it isn't, contact the Anti-Discrimination Board.

- to cover programs and strategies aimed at women only. The *Equal Opportunity for Women in the Workplace Act 1999* (Cth) says that all employers with 100 or more employees, and all higher education institutions, must develop and implement an "affirmative action program" to promote equal opportunity for women and report on this program annually to the Equal Opportunity for Women in the Workplace Agency, a federal government body.

In essence, an affirmative action program is a structured approach to ensuring that women are able to compete equally for employment, training and promotional opportunities, and that any disadvantages are addressed.

An affirmative action program involves keeping statistics on the occupations and employment status of women in the organisation, and using these to redress the imbalances in the profile of the workforce.

It also involves implementing specific affirmative action strategies including training or recruitment programs for women, introducing part-time work for women returning from maternity leave and reviewing promotion procedures to ensure all promotions are made solely on the basis of merit.

* Under Part IXA of the *NSW Anti-Discrimination Act 1977*, the *Public Service Reform Act 1984* (Cth), the *Employment Opportunity (Commonwealth Authorities) Act 1987* (Cth) and the *NSW Local Government Act 1993*, respectively.

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